A

KETUA PENGARAH PENDAFTARAN NEGARA, MALAYSIA & ORS v. QUAH ENG PANG

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
MOHD NAZLAN GHAZALI JCA
B AZHAHARI KAMAL RAMLI JCA
[CIVIL APPEAL NO: K-01(A)-590-11-2023]
5 JANUARY 2026

C **Abstract** – *(1) Pursuant to s. 17 of Part III of the Second Schedule to the Federal Constitution ('FC'), in the case of an illegitimate child, the term 'parent' refers to the mother and not the biological father, and the expression 'father', in the context of illegitimacy, is construed as referring to the mother. Therefore, the citizenship of an illegitimate child follows the citizenship of the mother, not the father; (ii) An issuance of the* D *National Registration Identity Card ('NRIC') stating 'Warganegara' does not automatically make a person a citizen. Pursuant to reg. 24 of the National Registration Regulations 1990, the child must prove that the information on the NRIC, especially the citizenship status, is true, by providing other evidence such as parents' lineage. In the absence of* E *such proof, the child has failed to discharge the burden of establishing that the child acquired Malaysian citizenship by way of registration or naturalisation.*

F ***CONSTITUTIONAL LAW:*** *Citizenship – Illegitimate child – Child born to Malaysian father and non-citizen mother – Whether 'parent' under s. 17 of Part III of Second Schedule to Federal Constitution ('FC') refers to mother – Whether citizenship of illegitimate child follows citizenship of mother – Whether child met requirement of s. 1(a) Part II, Second Schedule of FC – Whether child Malaysian citizen by operation of law under art. 14(1)(b) of FC – Whether classification and* G *registration of child as non-citizen lawfully effected*

CONSTITUTIONAL LAW: *Citizenship – Operation of law, by – Illegitimate child – Child born to Malaysian father and non-citizen mother – Whether earlier issuance of National Registration Identity Card proved citizenship of child – Whether child has to prove parents' lineage – Whether child acquired citizenship* H *by way of registration or naturalisation – Whether child Malaysian citizen by operation of law under art. 14(1)(b) of FC – Whether classification and registration of child as non-citizen lawfully effected*

I This was an appeal against the decision of the High Court Judge allowing the application by the applicant ('respondent') for declaratory orders that she be registered as a Malaysian citizen and as the legitimate daughter of her biological father. The respondent was born on 9 April 1994 in Kuala Lumpur and the biological mother registered in the birth register was Jamrat

Choodongmuan, a holder of a Thailand passport. The person registered as the birth father was Quah Eng Thye, a Malaysian citizen. The marriage of the biological father and the biological mother of the respondent was not registered under the Law Reform (Marriage and Divorce) Act 1976 ('Law Reform Act') and her parents had since been separated for more than 20 years. Consequently, since her parents were not legally married during her birth, the respondent was an illegitimate child at the time of her birth. The respondent was a victim of a snatch theft on 27 November 2013, resulting in the loss of her National Registration Identity Card ('NRIC'). She filed a police report and applied for a replacement at the Kulim National Registration Department ('NRD'). Despite her repeated inquiries, she did not receive a replacement NRIC. In April 2019, the respondent's father visited the NRD office regarding her NRIC application. An NRD officer asked him to sign a form, which he claimed had already been filled out by the officer. Believing it to be part of the NRIC replacement process, he signed the same. Instead of receiving a replacement NRIC, the respondent was issued with a new birth certificate by NRD on 2 October 2019. This new birth certificate replaced her original birth certificate. The new birth certificate was significantly different from the original. In the original, the respondent's father was listed as a Malaysian citizen. However, his name was removed from the new certificate and replaced with 'Maklumat Tidak Diperolehi'. Additionally, the respondent's citizenship status was changed from 'Warganegara' (citizen) to 'Bukan Warganegara'(non-citizen). Consequently, the respondent filed an originating summons seeking, *inter alia*, a declaration that any deprivation of Malaysian citizenship of the respondent was wrongful, non-compliant with, and contrary to Chapter 2, art. 26B and art. 27 of the Federal Constitution ('FC') and an order that the Register-General of Births and Deaths of Malaysia immediately re-register the respondent as a Malaysian citizen in her birth certificate and reinstate Quah Eng Thye as the father of the respondent. The High Court, in allowing the prayers sought by the respondent, held that the acts of the appellants in replacing the original birth certificate was *ultra vires* the laws on citizenship and the FC and that the appellants had breached the respondent's rights under the FC by cancelling the respondent's NRIC, refusing to issue a replacement NRIC, replacing the original birth certificate with the new one and had deprived the respondent of the right to be heard before depriving her of her citizenship. The issues that arose in this appeal were (i) whether the respondent was a citizen of Malaysia; and (ii) whether her Malaysian citizenship had been wrongfully revoked by the appellant.

Held (allowing appeal)
Per Azizah Nawawi JCA delivering the judgment of the court:

(1) Pursuant to s. 17 of Part III of the Second Schedule to the FC, in the case of an illegitimate child, the term 'parent' refers to the mother and not the biological father, and the expression 'father', in the context of

illegitimacy, is construed as referring to the mother. Therefore, the citizenship of an illegitimate child follows the citizenship of the mother, not the father. (para 35)

(2) The biological parents of the respondent were not legally married at the time of her birth. As a result, the respondent was considered illegitimate at birth. Since the respondent was illegitimate at birth, s. 17 of Part III of the Second Schedule to the FC requires the term 'parent' in s. 1(a) of Part II to be interpreted as 'mother'. Since the biological mother was a citizen of Thailand, therefore, the respondent did not meet the third requirement of s. 1(a), Part II, Second Schedule of the FC. The respondent was not a Malaysian citizen by operation of law under art. 14(1)(b) of the FC. (paras 37-39)

(3) The earlier issuance of the NRIC by the National Registration Department did not mean that the respondent was automatically a citizen, whether by registration or by law. The identity card alone did not prove citizenship. Just because 'WARGANEGARA' is stated on the NRIC does not automatically make the person a citizen. Accepting it as proof would contradict reg. 24(1) of the National Registration Regulations 1990. Consequently, pursuant to reg. 24, the respondent must prove that the information on her NRIC, especially her citizenship status, was true. All the information pertaining to her birth and that of her parents were provided by her father to NRD. As such, the respondent could not rely solely on the NRIC as proof of her citizenship, but must provide other evidence, such as her parents' or maternal lineage. Unfortunately, she had failed to do so. (paras 43-46)

(4) The respondent did not qualify to acquire citizenship by operation of law. At the time of the respondent's birth, her mother was not a citizen of the Federation of Malaysia. As such, there could not be any deprivation of citizenship when the respondent was never a citizen in the first place. The respondent did not acquire Malaysian citizenship by way of registration or naturalisation. The respondent had not produced any certificate of citizenship or any other documentary evidence to establish that her citizenship was acquired through registration. In the absence of such proof, the respondent had failed to discharge the burden of establishing that she acquired Malaysian citizenship by registration. Accordingly, arts. 26 and 27 of the FC and the Citizenship Rules 1964 had no application to the facts of the present appeal. Any reliance on these provisions was therefore misconceived. (paras 50 & 51)

(5) Accordingly, the classification and registration of the respondent as a non-citizen of Malaysia were therefore lawfully effected and were consistent with the requirements of the law. (para 53)

Case(s) referred to:

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2020] 4 CLJ 597 CA ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 6 CLJ 471 FC ***(refd)***

Foo Toon Aik v. Ketua Pendaftar Kelahiran Dan Kematian, Malaysia [2012] 4 CLJ 613 HC ***(refd)***

Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors [2018] 8 CLJ 412 CA ***(refd)***

Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor [2017] 7 CLJ 33 CA ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(refd)***

Legislation referred to:

Citizenship Rules 1964, ss. 37, 38, 39, 41, 43

Federal Constitution, arts. 14(1)(b), 26, 26B, 27, Second Schedule, Part II, s. 1(a), (b), Part III, s. 17

National Registration Regulation 1990, reg. 24(1)

For the appellants - Aliza Jamaluddin; SFC

For the respondent - Siau Suen Miin & Nurdiana Azmi; M/s Siau Suen Miin & Tan

[Editor's note: For the High Court judgment, please see Quah Eng Pang v. Ketua Pengarah Pendaftaran Negara & Ors [2024] CLJU 1509 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Azizah Nawawi JCA:

Introduction

[1] This is an appeal against the decision of the learned High Court Judge delivered on 5 October 2023, which allowed the application by the applicant/respondent ("the respondent") for declaratory orders that she be registered as a Malaysian citizen and as the legitimate daughter of her biological father.

The Salient Facts

[2] The respondent was born on 9 April 1994 in Kuala Lumpur and the biological mother registered in the birth register is Jamrat Choodongmuan, a holder of Thailand Passport No. V099212. The person registered as the birth father is Quah Eng Thye (NRIC No. 6780056).

[3] The marriage of the biological father and the biological mother of the respondent was not registered under the Law Reform (Marriage and Divorce) Act 1976 ("Law Reform Act") and her parents had since been separated for more than 20 years. Consequently, since her parents are not legally married during her birth, the respondent is an illegitimate child at the time of her birth.

[4] The respondent was a victim of a snatch theft on 27 November 2013, resulting in the loss of her National Registration Identity Card ("NRIC"). She filed a police report and applied for a replacement at the Kulim National Registration Department ("NRD"). Despite her repeated inquiries, she did not receive a replacement NRIC.

[5] In April 2019, the respondent's father visited the NRD office in Kulim regarding her NRIC application. A NRD officer asked him to sign a form (JPN: LM22), which he claimed had already been filled out by the officer. Believing it to be part of the NRIC replacement process, he signed the same.

[6] Instead of receiving a replacement NRIC, the respondent was issued with a new birth certificate by NRD on 2 October 2019. This new birth certificate (Serial No: 005543XA) replaced her original birth certificate (Serial No: K156474).

[7] The new birth certificate was significantly different from the original. In the original, the respondent's father, Quah Eng Thye (NRIC: 620418-07-5163), was listed as a Malaysian citizen. However, his name was removed from the new certificate and replaced with "Maklumat Tidak Diperolehi". Additionally, the respondent's citizenship status was changed from "Warganegara" (citizen) to "Bukan Warganegara" (non-citizen).

[8] Consequently, the respondent filed an originating summons seeking the following declaratory orders:

(i) a declaration that the respondent, Quah Eng Pang, is the legitimate daughter of Quah Eng Thye (IC No: 620418-07-5163);

(ii) a declaration that the respondent is a Malaysian citizen and that the appellants do not have the right to revoke the citizenship enjoyed by the respondent as a Malaysian citizen;

(iii) a declaration that any deprivation of Malaysian citizenship of the respondent is wrongful, non-compliant with, and contrary to Part III Chapter 2, arts. 26B, and 27 of the Federal Constitution; and

(iv) an order that the Registrar-General of Births and Deaths of Malaysia immediately re-register the respondent as a Malaysian citizen in her birth certificate and reinstate Quah Eng Thye (IC No: 620418-07-5163) as the father of the respondent.

[9] The learned judge has allowed all the prayers against the appellants.

Decision Of The High Court Judge

[10] In para. 10 of the judgment, the learned judge said as follows:

> [10] I am of the view that the facts peculiar to this plaintiff's case render it otiose for this court to determine whether or not the plaintiff qualifies to be a Malaysian citizen. The crucial issue here is whether or not in

replacing the original birth certificate with a new birth certificate and the refusal to issue a replacement NRIC ('the defendants' acts') the defendants were acting *ultra vires*.

[11] Therefore, the learned judge did not deal with the issue of citizenship but decided the case on the basis that the acts of the appellants in replacing the original birth certificate is *ultra vires* the laws on citizenship and the Federal Constitution.

[12] The learned judge had also decided that the appellants had breached the respondent's rights under the Federal Constitution by cancelling the respondent's NRIC, refusing to issue a replacement NRIC, replacing the original birth certificate with the new one and had deprived the respondent of the right to be heard before depriving her of her citizenship. The learned judge thereafter allowed the prayers sought by the respondent.

Our Decision

[13] From the affidavits affirmed by the appellants, the facts disclosed that at the time of the respondent's birth on 9 April 1994, birth certificates were handwritten and not computerised, and there was no section for citizenship status in the birth certificates.

[14] Following the loss of her NRIC and upon receiving her application for a replacement NRIC, the respondent and her biological father, Quah Eng Thye, were summoned by the Investigation and Enforcement Division of NRD Kuala Lumpur for an investigation due to doubts arising during her identity card replacement application.

[15] Based on their investigation and review, NRD had determined that the respondent is not a citizen by operation of law, as she was born out of wedlock and her mother is a non-citizen.

[16] NRD then conducted further investigations and found no record of the respondent's initial (first-time) identity card application in their system. A check with the Identity Card Division also confirmed that no such record existed. However, in 2006, the respondent was issued with an identity card with citizenship status by registration (dengan taraf kewarganegaraan secara masukan/daftaran).

[17] However despite this, the Citizenship Division of NRD found no record of any citizenship application or certificate ever being submitted or granted in the respondent's name, for citizenship *via* registration.

[18] After completing the investigation, NRD decided not to process the respondent's application and proceeded to cancel the respondent's identity card replacement request because her citizenship status was found to be irregular, as her previous identity card was issued based on a birth certificate

with inaccurate information. NRD subsequently revoked the respondent's identity card, because her citizenship status was found to be irregular and that the identity card had been improperly issued.

[19] Based on the abovementioned facts, we are of the considered opinion that the main issues in this appeal are as follows:

(i) whether the respondent is a citizen of Malaysia; and

(ii) whether her Malaysian citizenship had been wrongfully revoked by the appellant.

Whether The Respondent Is A Citizen Of Malaysia

[20] Citizenship by operation of law is provided under art. 14 of the Federal Constitution. Article 14 reads:

> Citizenship by operation of law
>
> 14 (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part 1 of the Second Schedule; and
>
> (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[21] The relevant clause in this appeal is cl. 1(b) of art. 14. Clause 1(b) must be read with Part II of the Second Schedule. Part II of the Second Schedule reads:

> Part II
>
> [Article 14(1)(b)]
>
> Citienship By Operation Of Law Of Perons Born On Or After Malaysia Day
>
> 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> (a) every person born within the Federation of whose parents one at least is at time of the birth either a citizen or permanently resident in the Federation; and
>
> (b) every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State; and
>
> (c) every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a

consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government;

(d) every person born in Singapore of whose parents one at least is at the time of the birth a citizen and who is not born a citizen otherwise than by virtue of this paragraph; and

(e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

[22] It must be noted that art. 14 read with s. 1, Part II of the Second Schedule of the Federal Constitution lays down the requisites of a citizenship by operation of law in very clear term. A person who meets all the criteria therein would qualify to become a citizen under that provision. Once the requisite conditions under these provisions are met, it is automatic that a person is a citizen by operation of law.

[23] The only relevant provision applicable to the respondent in this appeal is art. 14(1)(b) of the Federal Constitution read with s. 1(a), Part II, Second Schedule of the Federal Constitution.

[24] Pursuant to art. 14(1)(b), a person becomes a citizen by operation of law if the conditions set out in any of the paragraphs of s. 1 of Part II are satisfied. Article 14(1)(b) embodies the principle of citizenship by *jus soli*, that is, by place of birth, while s. 1 of Part II encapsulates the requirement of *jus sanguinis*, namely, by blood or lineage. Accordingly, the acquisition of citizenship turns on whether these prescribed constitutional conditions are fulfilled.

[25] These concepts of *jus soli* and *jus sanguinis* had been explained by this court in *Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor* [2017] 7 CLJ 33; [2017] 3 MLJ 308 at p. 46 (CLJ); p. 320 (MLJ) as follows:

> [29] In determining citizenship of a person, two concepts are commonly applied, namely the concept of *jus soli* and the concept of *jus sanguinis*. *Jus soli* which means 'right of the soil', and commonly referred to as birthright citizenship, is the right of anyone born in the territory of a State to nationality or citizenship. The determining factor being the place or territory where a person was born. In the case of *jus sanguinis*, which in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are citizens of the State. Viewed from the context of these two concepts, we are of the considered opinion *that art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of jus sanguinis and of jus soli, whereby citizenship of a person is traceable to the place of birth namely, Malaysia,*

A *as well as Malaysian citizenship of one of the person's parents (the right of blood) at the time of the person's birth, in order to be a Malaysian citizen by operation of law, under art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution.*

…

B [31] What had become clear to us had been that *one of the key ingredients stipulated in art. 14(1)(b) read together with s. 1(a) of Part II of the Second Schedule of the Federal Constitution, is that the person seeking to be a citizen of Malaysia via this specific constitutional provision must show proof that when he was born in this country, one of his parents must either be a citizen of Malaysia or was permanently resident in this country.* The phrase that is employed under that
C provision reads, "is at the time of the birth". *To our minds, that phrase has categorically made a reference to the biological parent of the person, who must either be a Malaysian citizen or a person who is permanently resident in Malaysia.* By virtue of this phrase, any person intending to claim citizenship by operation of law under the above stated constitutional provision, it is not
D sufficient that he or she was born in Malaysia. *He must be a person, whose either parent was a Malaysian citizen or a Malaysian permanent resident, when he was born in Malaysia. That provision does not contain any reference to an adoptive parent, albeit a Malaysian adoptive parent.* (emphasis added)

[26] The same issue had been decided by this court in *Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2017] 8 CLJ 412; [2018] 6 MLJ 548, where this court read art. 14(1)(b) and s. 1(e) as follows:

E [26] The second issue before us is whether the second appellant has satisfied the requirements stipulated in para 1(e) of Part I, second Schedule of the Federal Constitution, to be read with art. 14(1)(b) of the Federal Constitution to obtain citizenship by operation of law?

F [27] *Article 14(1)(b) of the Federal Constitution encapsulates the requirement of citizenship by jus soli ie, by place of birth;* while *para 1(e) of Part II, Second Schedule of the Federal Constitution (not born a citizen a citizen of any country) encapsulates the requirement of citizenship by jus sanguinis, ie, by blood or lineage.* (emphasis added)

G **[27]** Therefore, under art. 14(1)(b) of the Federal Constitution read with s. 1(a), Part II, Second Schedule of the Federal Constitution, it is clear that for a person to be a Malaysian citizen by operation of law pursuant to these provisions, the requisite qualifications to be fulfilled are as follows:

H (i) the person was born on or after Malaysia Day;

(ii) the person was born within the Federation; and

(iii) at the time of the person's birth, one of the parents is a Malaysian citizen or permanently resident in the Federation.

I **[28]** There is no dispute that the respondent was born after Merdeka Day and that she was born within the Federation. The DNA test also confirmed that she is the child of Quah Eng Thye, a Malaysian citizen.

[29] The only issue here is whether at the time of her birth, one of her parents is a Malaysian citizen or permanent resident in the Federation.

[30] In *Foo Toon Aik v. Ketua Pendaftar Kelahiran Dan Kematian, Malaysia* [2012] 4 CLJ 613, Justice Rohana Yusuf in holding that an illegitimate child to a non-citizen mother is not qualified to acquire citizenship by operation of law as held at p. 619 as follows:

> [18] … *There is no doubt that at the time of his birth Foo Shi Wen was not born to a lawful parent. Since at birth he was not born to a lawful parent he did not qualify to be a citizen by operation of law.* The emphasis of the requirement under art. 14 has to be placed on his birth status *because art. 14 clearly refer to the fulfilment of the requisite conditions at the time of his birth.* It cannot be disputed that his birth status does not qualify him to be a citizen by operation of law. *Furthermore s. 17 of the Part III of the Second Schedule provides that "for the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother ..." Thus, it is clear that in a case of an illegitimate child, as in this case, the word parent refers to his mother and not the biological father, the applicant.* (emphasis added)

[31] In *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2020] 4 CLJ 597; [2020] MLRAU 51; [2020] 3 AMR 421; [2020] 3 MLJ 634, the Court of Appeal held that:

> [6] Reading the above cited provisions, we find there will not be any problem if a child is born legitimate to a father who is a Malaysian citizen even if he is born outside the Federation. But in the instant appeal, *the child was born out of wedlock. He was illegitimate at the time of his birth. So there comes the problems. Section 17 of Part III of the Second Schedule specifically stipulates that "father" in relation to a person who is illegitimate refer to his mother.* (emphasis added)

[32] The above decision of this court was affirmed by the Federal Court in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 4 MLJ 236 ("*CTEB*") where the Federal Court held that the word "parents" in s. 1(a) must be given a plain and ordinary meaning, and must therefore refer to lawful parents. On behalf of the majority, Rohana Yusuf PCA held as follows:

> [56] The other decision by the Court of Appeal in *Lim Jen Hsian* (*supra*) relates to a child born in Malaysia to a Malaysian citizen father and a Thai-citizen mother. Both were not married at the time of the child's birth, or at any subsequent time. In fact, the Thai-citizen mother returned to Thailand for good and the child had since been in the care of the applicant's mother in Malaysia. On the question of whether the child acquired citizenship by operation of law under art. 14(1)(b) read together with s. 1(e) of Part II of the Second Schedule, the Court of Appeal held that, though the child was born in Malaysia to a Malaysian biological father, because he was born illegitimate, he cannot acquire Malaysian citizen by operation of law. His citizenship follows his Thai mother.

A [57] *Reference was made in the above cases to the interpretation section in s. 17. The court found that while the child's biological father was a Malaysian citizen, and because of his illegitimate status since birth, the child could not have acquired the citizenship of his biological father. Instead, he acquired the citizenship of his biological mother, a Thai national.* Consequently, the court found that he was not Stateless as envisaged under s. 1(e) of Part II, Second Schedule of the FC, B to qualify him as a citizen of Malaysia by operation of law.

[58] In the present appeal before us, the Court of Appeal in *CTEB* (*supra*) followed the approaches taken in all of the above decisions in holding that the child's status at birth was the determination point in qualifying for the acquisition of citizenship by operation of law. And that the marriage of C the parents was held to be irrelevant for the purpose of acquiring citizenship by operation of law because the emphasis is "at the time of the child's birth". The proper and correct interpretation of s. 17 was applied. I agree with the approach taken by the Court of Appeal in the application and construction of art. 14 and the related provisions.

(emphasis added)

D **[33]** Section 17 of Part III of the Second Schedule reads as follows:

17. For the purpose of Part III of this Constitution references to a person's father or to his parent, or to one of these parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person. E

[34] The Federal Court in *CTEB* (*supra*), in interpreting art. 14(1)(b) of the Federal Constitution read with s. 1(b) of Part II and s. 17 of Part III of the Second Schedule, held that the word "father" in s. 1(b) of Part II refers to the child's biological father. However, with regard to illegitimate children, F s. 17 of Part III has construed the word "father" in s. 1(b) to mean "mother". The Federal Court held as follows:

[44] *Section 17 provides for reference to the "father" of an illegitimate child to refer to his "mother". The only clear meaning to be concluded therefore is that the child's citizenship follows that of his mother.* There is nothing ambiguous about s. 17 G to permit other rules of interpretation.

[45] *From the express distinction for parents or father of an illegitimate child in s. 17, it is obvious that the word "parents" in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation.* This country never legally recognised unwedded parents. I say so because proper distinctions have always been made in our legislation in order to H differentiate between the status of "parents" in a recognised marriage or otherwise. Even under s. 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear distinction between a father and mother of an illegitimate child. *This connotes that "parents" refer always to legally wedded parents, not the biological father and mother.* (emphasis added)

I

[35] It is therefore well-settled that, as affirmed by the Federal Court in *CTEB* (*supra*) pursuant to s. 17 of Part III of the Second Schedule of the Federal Constitution, in the case of an illegitimate child, the term "parents" refers to the mother and not the biological father, and the expression "father", in the context of illegitimacy, is construed as referring to the mother. Therefore, the citizenship of an illegitimate child follows the citizenship of the mother, not the father.

[36] The court in *Pang Wee See* (*supra*) had also held that citizenship by operation of law is based on the biological parent who meets the criteria under the Federal Constitution. It does not consider "deemed" biological parentage, such as adoptive parents, for determining citizenship.

[37] In the present case, it is not in dispute that the biological parents of the respondent were not legally married at the time of her birth. As a result, the respondent was considered illegitimate at birth.

[38] Since the respondent was illegitimate at birth, s. 17 of Part III of the Second Schedule of the Federal Constitution requires the term "parent" in s. 1(a) of Part II to be interpreted as "mother". The Federal Court's decision in *CTEB* is the binding authority on this point.

[39] Since the biological mother is a citizen of Thailand, therefore the respondent does not meet the third requirement of s. 1(a), Part II, Second Schedule of the Federal Constitution. Therefore, the respondent is not a Malaysian citizen by operation of law under art. 14(1)(b) of the Federal Constitution.

[40] However, the learned judge took the position that the issue of citizenship is otiose, and that the only issue before her is whether the appellants can revoke the respondent's citizenship under the law.

[41] We are of the considered opinion that the issue of citizenship is not otiose or redundant, because the burden to prove that she is a citizen of Malaysia rests with the respondent.

[42] In the present appeal, the respondent relied on her earlier NRIC, which is issued to citizens of Malaysia. However, we are of the considered opinion, and we agree with the appellants that the earlier issuance of the NRIC by the National Registration Department does not mean that the respondent is automatically a citizen, whether by registration or by law.

[43] The identity card alone does not prove citizenship. Just because "WARGANEGARA" is stated on the NRIC does not automatically make the person a citizen. Accepting it as proof would contradict reg. 24(1) of the National Registration Regulation 1990.

[44] The "WARGANEGARA" status on the NRIC is invalid from the start because the law does not assume the information on the identity card to be correct, as the information therein was given by the respondent for the NRIC. This is based on reg. 24 of the National Registration Regulation 1990 which provides as follows:

> Regulation 24. No presumption concerning contents of identity cards, *etc*.
>
> (1) The **burden of proving the truth of the contents** of any written application for registration under these Regulations, or the contents of an identity card, **shall be on the applicant,** or on the person to whom such identity has been issued, or on any other person **alleging the truth of such contents.**
>
> (2) Where any persons claim that he is an exempted person the burden of proving such fact shall lie upon him. (emphasis added)

[45] Regulation 24 was considered by the Federal Court in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301 and held as follows:

> [21] Regulation 24 of the National Registration Regulations 1990 ('the NRR 1990') provides as follows:
>
> (1) The burden of proving the truth of the contents of any written application for registration under these Regulations, or the contents of an identity card, shall be on the applicant, or on the person to whom such identity has been issued, or on any other person alleging the truth of such contents.
>
> (2) Where any person claims that he is an exempted person the burden of proving such fact shall lie upon him.
>
> [22] Pursuant to reg. 24, the contents of an identity card and of any written application are respectively evidence before a court of law. That being so, any person seeking to establish a fact which is disputed is not allowed to rely solely on his identity card or the contents of his written application of his identity card as evidence of the truth of the fact he alleges. The burden remains on him to prove the truth of that fact and he must do so through other means.
>
> …
>
> [28] It is not necessary to discuss in detail the purpose for which identity cards exist. Suffice to state that they exist for security purposes to allow the Government and its departments, law enforcement agencies and the general public, a means to identify others. The contents of one's identity card and written applications made for such cards do have some degree of force in identification. They allow those who need identification or proof of citizenship to fall back on the identity card to determine identity. Regulation 24 of the NRR 1990, however, applies in cases where the contents of an identity card are disputed. In those circumstances, the entry in the identity card or a written application made pursuant thereto cannot be taken as conclusive proof of the truth of their contents.

[29] The rule makes sense if we consider that a person who falsifies a fact or whose fact was made or registered by mistake, as the case may be, cannot be allowed to benefit by converting the fraud or the mistake into a false truth. The same is true of outdated information. A more common and simple illustration of this is circumstances in which a person may be required to prove his or her current residential address by furnishing a recent electric bill or water bill instead of using the residential address stated in such person's identity card.

[30] It follows that I agree and adopt the following observations of Dr Badariah JCA in *Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal* [2021] 1 MLJ 120 ('*Maqsood*'):

> [136] … we are of the view a MyKad is not conclusive evidence of religious identity. Just because a MyKad states 'Islam' does not *ipso facto* mean that the given person is to be taken as a person 'professing the religion of Islam'. Firstly, our reading of *Lina Joy* suggests that the Federal Court, strictly considering administrative law, held that the NRD was not incorrect to require an order from the Syariah Courts before removing the word 'Islam' from the applicant's MyKad. The Federal Court did not venture to say that a MyKad was in fact conclusive of her status as a person 'professing the religion of Islam'. We are fortified in our view by comparing the decision in *Lina Joy* to the decision in *Azmi*.
>
> [137] But for the sake of caution, we hasten to add that if a person's MyKad clearly does not state that he or she is a Muslim, given the unique circumstances adjudicated in *Lina Joy*, there would be no reason to investigate such a person for a Syariah offence because it is clear that he or she is not a Muslim. However, if his/her MyKad says he/she is 'Islam', then that is where the ambiguity lies, *because the religious identity as stated in the MyKad is not conclusive proof of what is stated if that fact is disputed. Thus, any person alleging a fact in the MyKad to be true still bears the burden of proving its truth.*
>
> …
>
> [41] The above result drawn from construing ss. 101, 102 and 103 of the Evidence Act 1950 together, conforms to and is consistent with the language of reg. 24 of the NRR 1990. The defendants and the judicial commissioner in the High Court relied on *Ibrahim* and *Yap Ah Mooi*'s respective written applications stating their status as 'berkahwin' as a basis to believe that they were married. *Reading s. 103 with reg. 24(1), clearly the burden to prove that that assertion is true lies on the defendants since it is the defendants who rely on that statement for the truth of its contents.*
>
> (emphasis added)

[46] Consequently, pursuant to reg. 24, the respondent must prove that the information on her NRIC, especially her citizenship status, is true. This is because all the information pertaining to her birth and that of her parents

were provided by her father to NRD. As such, the respondent cannot rely solely on the NRIC as proof of her citizenship, but must provide other evidence, such as her parents' or maternal lineage. Unfortunately, in this appeal she has failed to do so.

Whether Her Malaysian Citizenship Had Been Wrongfully Revoked By The Appellants

[47] The next issue is whether the appellants had wrongfully revoked the respondent's citizenship. In para. [10] of the judgment, the learned judge made a finding that the appellants had acted beyond their legal authority by replacing the original birth certificate with a new one and refusing to issue a replacement NRIC to the respondent:

> … the crucial issue here is whether or not in replacing the original birth certificate with a new birth certificate and the refusal to issue a replacement NRIC ('the defendants' acts) the defendants were acting *ultra vires*.

[48] The learned judge then referred to arts. 26 and 27 of the Federal Constitution read with rr. 37, 38, 39, 41 and 43 of the Citizenship Rules 1964, which are the procedures to be complied with in order to deprive a person of his citizenship. The learned High Court Judge made the following conclusion in para. 21:

> ... In the first instance, the defendants were not empowered to conduct an inquiry to determine and make a finding of the plaintiff's citizenship status. To add insult to injury the defendants' surreptitious manner of conducting this inquiry denied the plaintiff of the rule of natural justice, that is, the right to be heard. Both these acts were committed in flagrant disregard of the Federal Constitution and the Citizenship Rules 1964 ...

[49] The learned judge had referred to arts. 26 and 27 of the Federal Constitution, which are on deprivation of citizenship:

> Article 26: Other provisions for deprivation of citizenship by registration or naturalization
>
> 26. (1) The Federal Government may by order deprive of his citizenship any citizen by registration or by naturalization if satisfied that the registration or certificate of naturalization …
>
> Article 27: Procedure for deprivation
>
> 27. (1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

[50] We are of the considered opinion, and we agree with the appellant that the learned judge has clearly misapplied the law in her decision. In the first place, the respondent does not qualify to acquire citizenship by operation of law. This is because at the time of the respondent's birth, her mother was not a citizen of the Federation of Malaysia. As such, there cannot be any deprivation of citizenship when the respondent was never a citizen in the first place.

[51] Added to that, the provisions cited by the learned judge relate to the deprivation of citizenship granted through registration or naturalisation. However, we are of the considered opinion that the respondent did not acquire Malaysian citizenship by way of registration or naturalisation. The respondent has not produced any certificate of citizenship or any other documentary evidence to establish that her citizenship was acquired through registration. In the absence of such proof, the respondent has failed to discharge the burden of establishing that she acquired Malaysian citizenship by registration. Accordingly, arts. 26 and 27 of the Federal Constitution and the Citizenship Rules 1964 have no application to the facts of the present appeal. Any reliance on these provisions was therefore misconceived.

[52] In the premises, we find that the respondent is not a Malaysian citizen by operation of law. Added to that, we also find that the respondent did not acquire Malaysian citizenship by way of registration or naturalisation. Accordingly, the classification and registration of the respondent as a non-citizen of Malaysia were therefore lawfully effected and are consistent with the requirements of the law.

Conclusion

[53] For the aforesaid reasons, we are of the considered opinion that the learned judge was clearly in error in his findings which merits out appellate intervention. The appeal is allowed and the decision of the learned judge is set aside. We make no order as to costs.